

1                                    AMENDMENT TO HOUSE BILL 1281

2            AMENDMENT NO. \_\_\_\_\_. Amend House Bill 1281, AS AMENDED,  
3 by replacing everything after the enacting clause with the  
4 following:

5            "Section 1. Short title. This Act may be cited as the  
6 Capital Punishment Reform Study Committee Act.

7            Section 2. Capital Punishment Reform Study Committee.

8            (a) There is created the Capital Punishment Reform Study  
9 Committee, hereinafter referred to as the Committee,  
10 consisting of 15 members appointed as follows:

11                    (1) Three members appointed by the President of the  
12 Senate;

13                    (2) Two members appointed by the Minority Leader of  
14 the Senate;

15                    (3) Three members appointed by the Speaker of the  
16 House of Representatives;

17                    (4) Two members appointed by the Minority Leader of  
18 the House of Representatives;

19                    (5) One member appointed by the Attorney General;

20                    (6) One member appointed by the Governor;

21                    (7) One member appointed by the Cook County State's  
22 Attorney;

1           (8) One member appointed by the Office of the Cook  
2 County Public Defender;

3           (9) One member appointed by the Office of the State  
4 Appellate Defender; and

5           (10) One member appointed by the office of the  
6 State's Attorneys Appellate Prosecutor.

7           (b) The Committee shall study the impact of the various  
8 reforms to the capital punishment system enacted by the 93rd  
9 General Assembly and annually report to the General Assembly  
10 on the effects of these reforms. Each report shall include:

11           (1) The impact of the reforms on the issue of  
12 uniformity and proportionality in the application of the  
13 death penalty including, but not limited to, the tracking  
14 of data related to whether the reforms have eliminated  
15 the statistically significant differences in sentencing  
16 related to the geographic location of the homicide and  
17 the race of the victim found by the Governor's Commission  
18 on Capital Punishment in its report issued on April 15,  
19 2002.

20           (2) The implementation of training for police,  
21 prosecutors, defense attorneys, and judges as recommended  
22 by the Governor's Commission on Capital Punishment.

23           (3) The impact of the various reforms on the  
24 quality of evidence used during capital prosecutions.

25           (4) The quality of representation provided by  
26 defense counsel to defendants in capital prosecutions.

27           (5) The impact of the various reforms on the costs  
28 associated with the administration of the Illinois  
29 capital punishment system.

30           (c) The Committee shall hold hearings on a periodic  
31 basis to receive testimony from the public regarding the  
32 manner in which reforms have impacted the capital punishment  
33 system.

34           (d) The Committee shall submit its final report to the

1 General Assembly no later than 5 years after the effective  
2 date of this Act.

3 Section 5. The Illinois Criminal Justice Information Act  
4 is amended by adding Section 7.2 as follows:

5 (20 ILCS 3930/7.2 new)

6 Sec. 7.2. Custodial Interview Pilot Program.

7 (a) Legislative findings and intent. The General  
8 Assembly finds that technology has made it possible to  
9 electronically record custodial interviews of suspects during  
10 first degree murder investigations. This technology will  
11 protect law enforcement agencies against claims of abuse and  
12 coercion by suspects while providing a memorialized account  
13 of interviews at police stations. The technology will also  
14 provide a better means for courts to review confessions of  
15 suspects with direct evidence of demeanor, tone, manner, and  
16 content of statements. The General Assembly intends to create  
17 a Custodial Interview Pilot Program to establish 4 pilot  
18 programs at police stations in the State of Illinois. For  
19 each program, video and audio experts shall install equipment  
20 and train participating law enforcement agencies to  
21 electronically record custodial interviews at their  
22 respective police stations. Participating law enforcement  
23 agencies shall choose how to use the equipment in cooperation  
24 with the local State's Attorney's office. The participating  
25 law enforcement agencies may choose to electronically record  
26 interviews of suspects for offenses other than first degree  
27 murder if they adopt local protocols in cooperation with the  
28 local State's Attorney's office.

29 (b) Definitions. In this Section:

30 (1) "Electronically record" means to memorialize by  
31 video and audio electronic equipment.

32 (2) "Custodial interviews" means interviews of

1 suspects during first degree murder investigations or  
2 other investigations established by local protocol by law  
3 enforcement authorities that take place at the police  
4 station.

5 (c) Custodial Interview Pilot Program. The Authority  
6 shall, subject to appropriation, establish a Custodial  
7 Interview Pilot Program to operate 4 custodial interview  
8 pilot programs. The programs shall be established in a police  
9 station in the County of Cook and in 3 other police stations  
10 geographically distributed throughout the State. Each  
11 participating law enforcement agency must:

12 (1) Promulgate procedures for recording custodial  
13 interviews of suspects during first degree murder  
14 investigations by video and audio means.

15 (2) Promulgate procedures for maintaining and  
16 storing video and audio recordings.

17 (d) Each of the 4 pilot programs established by the  
18 Authority shall be in existence for a minimum of 2 years  
19 after its establishment under this Act.

20 (e) Report. No later than one year after the  
21 establishment of pilot programs under this Section, the  
22 Authority must report to the General Assembly on the efficacy  
23 of the Custodial Interview Pilot Program.

24 (f) The Authority shall adopt rules in cooperation with  
25 the Illinois Department of State Police to implement this  
26 Section.

27 Section 6. The Illinois Police Training Act is amended by  
28 changing Section 6.1 as follows:

29 (50 ILCS 705/6.1)

30 Sec. 6.1. Decertification of full-time and part-time  
31 police officers.

32 (a) The Board must review police officer conduct and

1 records to ensure that no police officer is certified or  
2 provided a valid waiver if that police officer has been  
3 convicted of a felony offense under the laws of this State or  
4 any other state which if committed in this State would be  
5 punishable as a felony. The Board must also ensure that no  
6 police officer is certified or provided a valid waiver if  
7 that police officer has been convicted on or after the  
8 effective date of this amendatory Act of 1999 of any  
9 misdemeanor specified in this Section or if committed in any  
10 other state would be an offense similar to Section 11-6,  
11 11-9.1, 11-14, 11-17, 11-19, 12-2, 12-15, 16-1, 17-1, 17-2,  
12 28-3, 29-1, 31-1, 31-6, 31-7, 32-4a, or 32-7 of the Criminal  
13 Code of 1961 or to Section 5 or 5.2 of the Cannabis Control  
14 Act. The Board must appoint investigators to enforce the  
15 duties conferred upon the Board by this Act.

16 (b) It is the responsibility of the sheriff or the chief  
17 executive officer of every local law enforcement agency or  
18 department within this State to report to the Board any  
19 arrest or conviction of any officer for an offense identified  
20 in this Section.

21 (c) It is the duty and responsibility of every full-time  
22 and part-time police officer in this State to report to the  
23 Board within 30 days, and the officer's sheriff or chief  
24 executive officer, of his or her arrest or conviction for an  
25 offense identified in this Section. Any full-time or  
26 part-time police officer who knowingly makes, submits, causes  
27 to be submitted, or files a false or untruthful report to the  
28 Board must have his or her certificate or waiver immediately  
29 decertified or revoked.

30 (d) Any person, or a local or State agency, or the Board  
31 is immune from liability for submitting, disclosing, or  
32 releasing information of arrests or convictions in this  
33 Section as long as the information is submitted, disclosed,  
34 or released in good faith and without malice. The Board has

1 qualified immunity for the release of the information.

2 (e) Any full-time or part-time police officer with a  
3 certificate or waiver issued by the Board who is convicted of  
4 any offense described in this Section immediately becomes  
5 decertified or no longer has a valid waiver. The  
6 decertification and invalidity of waivers occurs as a matter  
7 of law. Failure of a convicted person to report to the Board  
8 his or her conviction as described in this Section or any  
9 continued law enforcement practice after receiving a  
10 conviction is a Class 4 felony.

11 (f) The Board's investigators are peace officers and  
12 have all the powers possessed by policemen in cities and by  
13 sheriff's, provided that the investigators may exercise those  
14 powers anywhere in the State, only after contact and  
15 cooperation with the appropriate local law enforcement  
16 authorities.

17 (g) The Board must request and receive information and  
18 assistance from any federal, state, or local governmental  
19 agency as part of the authorized criminal background  
20 investigation. The Department of State Police must process,  
21 retain, and additionally provide and disseminate information  
22 to the Board concerning criminal charges, arrests,  
23 convictions, and their disposition, that have been filed  
24 before, on, or after the effective date of this amendatory  
25 Act of the 91st General Assembly against a basic academy  
26 applicant, law enforcement applicant, or law enforcement  
27 officer whose fingerprint identification cards are on file or  
28 maintained by the Department of State Police. The Federal  
29 Bureau of Investigation must provide the Board any criminal  
30 history record information contained in its files pertaining  
31 to law enforcement officers or any applicant to a Board  
32 certified basic law enforcement academy as described in this  
33 Act based on fingerprint identification. The Board must make  
34 payment of fees to the Department of State Police for each

1 fingerprint card submission in conformance with the  
2 requirements of paragraph 22 of Section 55a of the Civil  
3 Administrative Code of Illinois.

4 (h) A police officer who has been certified or granted a  
5 valid waiver may also be decertified or have his or her  
6 waiver revoked upon a determination by the Board that he or  
7 she, while under oath, has knowingly and willfully made false  
8 statements as to a material fact during a homicide  
9 proceeding. A determination may be made only after an  
10 investigation and hearing upon a verified complaint filed  
11 with the Illinois Law Enforcement Training Standards Board.  
12 No action may be taken by the Board regarding a complaint  
13 unless a majority of the members of the Board are present at  
14 the meeting at which the action is taken.

15 (1) The Board shall adopt rules governing the  
16 investigation and hearing of a verified complaint to  
17 assure the police officer due process and to eliminate  
18 conflicts of interest within the Board itself.

19 (2) Upon receipt of the initial verified complaint,  
20 the Board must make a finding within 30 days of receipt  
21 of the complaint as to whether sufficient evidence exists  
22 to support the complaint. The Board is empowered to  
23 investigate and dismiss the complaint if it finds, by a  
24 vote of a majority of the members present, that there is  
25 insufficient evidence to support it. Upon the initial  
26 filing, the sheriff or police chief, or other employing  
27 agency, of the accused officer may suspend, with or  
28 without pay, the accused officer pending a decision of  
29 the Board. Upon a Board finding of insufficient evidence,  
30 the police officer shall be reinstated with back pay,  
31 benefits, and seniority status as appropriate. The  
32 sheriff or police chief, or employing agency, shall take  
33 such necessary action as is ordered by the Board.

34 (3) If the Board finds, by a vote of a majority of

1 the members present, that sufficient evidence exists to  
2 support the complaint, it shall authorize a hearing  
3 before an administrative law judge within 45 days of the  
4 Board's finding, unless, based upon the complexity and  
5 extent of the allegations and charges, additional time is  
6 needed. In no event may a hearing before an  
7 administrative law judge take place later than 60 days  
8 after the Board's finding.

9 (i) The Board shall have the power and authority to  
10 appoint administrative law judges on a contractual basis.  
11 The Administrative law judges must be attorneys licensed to  
12 practice law in the State of Illinois. The Board shall also  
13 adopt rules governing the appointment of administrative law  
14 judges and the conduct of hearings consistent with the  
15 requirements of this Section. The administrative law judge  
16 shall hear all evidence and prepare a written recommendation  
17 of his or her findings to the Board. At the hearing the  
18 accused police officer shall be afforded the opportunity to:

- 19 (1) Be represented by counsel;
- 20 (2) Be heard in his or her own defense;
- 21 (3) Produce evidence in his or her defense;
- 22 (4) Request that the Board compel the attendance of  
23 witnesses and production of court records and documents.

24 (j) Once a case has been set for hearing, the person who  
25 filed the verified complaint shall have the opportunity to  
26 produce evidence to support any charge against a police  
27 officer that he or she, while under oath, has knowingly and  
28 willfully made false statements as to a material fact during  
29 a homicide proceeding.

30 (1) The person who filed the verified complaint  
31 shall have the opportunity to be represented by counsel  
32 and shall produce evidence to support his or her charges;

33 (2) The person who filed the verified complaint may  
34 request the Board to compel the attendance of witnesses

1 and production of court records and documents.

2 (k) The Board shall have the power to issue subpoenas  
3 requiring the attendance and testimony of witnesses and the  
4 production of court records and documents and shall have the  
5 power to administer oaths.

6 (l) The administrative law judge shall have the  
7 responsibility of receiving into evidence relevant testimony  
8 and documents, including court records, to support or  
9 disprove the allegations made by the person filing the  
10 verified complaint, and, at the close of the case, hear  
11 arguments. If the administrative law judge finds that there  
12 is not clear and convincing evidence to support the verified  
13 complaint that the police officer has, while under oath,  
14 knowingly and willfully made false statements as to a  
15 material fact during a homicide proceeding, the  
16 administrative law judge shall make a written recommendation  
17 of dismissal to the Board. If the administrative law judge  
18 finds that there is clear and convincing evidence to support  
19 the verified complaint that the police officer has, while  
20 under oath, knowingly and willfully made false statements as  
21 to a material fact during a homicide proceeding, the  
22 administrative law judge shall make a written recommendation  
23 of decertification to the Board.

24 (m) Any person, with the exception of the police officer  
25 who is the subject of the hearing, who is served by the Board  
26 with a subpoena to appear, testify or produce evidence and  
27 refuses to comply with the subpoena is guilty of a Class B  
28 misdemeanor. Any circuit court or judge, upon application by  
29 the Board, may compel compliance with a subpoena issued by  
30 the Board.

31 (n) Within 15 days of receiving the recommendation, the  
32 Board shall consider the recommendation of the administrative  
33 law judge and the record of the hearing at a Board meeting.  
34 If, by a two-thirds vote of the members present at the Board

1 meeting, the Board finds that there is clear and convincing  
2 evidence that the police officer has, while under oath,  
3 knowingly and willfully made false statements as to a  
4 material fact during a homicide proceeding, the Board shall  
5 order that the police officer be decertified as a full-time  
6 or part-time police officer. If less than two-thirds of the  
7 members present vote to decertify the police officer, the  
8 Board shall dismiss the complaint.

9 (o) The provisions of the Administrative Review Law  
10 shall govern all proceedings for the judicial review of any  
11 order rendered by the Board. The moving party shall pay the  
12 reasonable costs of preparing and certifying the record for  
13 review. If the moving party is the police officer and he or  
14 she prevails, the court may award the police officer actual  
15 costs incurred in all proceedings, including reasonable  
16 attorney fees. If the court awards the police officer the  
17 actual costs incurred in a proceeding, including reasonable  
18 attorney fees, the costs and attorney fees shall be paid,  
19 subject to appropriation, from the Illinois Law Enforcement  
20 Training Standards Board Costs and Attorney Fees Fund, a  
21 special fund that is created in the State Treasury. The Fund  
22 shall consist of moneys appropriated or transferred into the  
23 Fund for the purpose of making payments of costs and attorney  
24 fees in accordance with this subsection (o). The Illinois Law  
25 Enforcement Training Standards Board shall administer the  
26 Fund and adopt rules for the administration of the Fund and  
27 for the submission and disposition of claims for costs and  
28 attorney fees in accordance with this subsection (o).

29 (p) If the police officer is decertified under  
30 subsection (h), the Board shall notify the defendant who was  
31 a party to the proceeding that resulted in the police  
32 officer's decertification and his or her attorney of the  
33 Board's decision. Notification shall be by certified mail,  
34 return receipt requested, sent to the party's last known

1 address and to the party's attorney if any.

2 (g) Limitation of action.

3 (1) No complaint may be filed pursuant to this  
4 Section until after a verdict or other disposition is  
5 rendered in the underlying case or the underlying case is  
6 dismissed in the trial court.

7 (2) A complaint pursuant to this Section may not be  
8 filed more than 2 years after the final resolution of the  
9 case. For purposes of this Section, final resolution is  
10 defined as the trial court's ruling on the State  
11 post-conviction proceeding in the case in which it is  
12 alleged the police officer, while under oath, knowingly  
13 and willfully made false statements as to a material fact  
14 during a homicide proceeding. In the event a  
15 post-conviction petition is not filed, an action pursuant  
16 to this Section may not be commenced more than 2 years  
17 after the denial of a petition for certiorari to the  
18 United States Supreme Court, or if no petition for  
19 certiorari is filed, 2 years after the date such a  
20 petition should have been filed. In the event of an  
21 acquittal, no proceeding may be commenced pursuant to  
22 this Section more than 6 years after the date upon which  
23 judgment on the verdict of acquittal was entered.

24 (r) Interested parties. Only interested parties to the  
25 criminal prosecution in which the police officer allegedly,  
26 while under oath, knowingly and willfully made false  
27 statements as to a material fact during a homicide proceeding  
28 may file a verified complaint pursuant to this Section. For  
29 purposes of this Section, "interested parties" include the  
30 defendant and any police officer who has personal knowledge  
31 that the police officer who is the subject of the complaint  
32 has, while under oath, knowingly and willfully made false  
33 statements as to a material fact during a homicide  
34 proceeding.

1 (Source: P.A. 91-495, eff. 1-1-00.)

2 Section 10. The Criminal Code of 1961 is amended by  
3 changing Sections 9-1 and 14-3 as follows:

4 (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

5 Sec. 9-1. First degree Murder - Death penalties -  
6 Exceptions - Separate Hearings - Proof - Findings - Appellate  
7 procedures - Reversals.

8 (a) A person who kills an individual without lawful  
9 justification commits first degree murder if, in performing  
10 the acts which cause the death:

11 (1) he either intends to kill or do great bodily  
12 harm to that individual or another, or knows that such  
13 acts will cause death to that individual or another; or

14 (2) he knows that such acts create a strong  
15 probability of death or great bodily harm to that  
16 individual or another; or

17 (3) he is attempting or committing a forcible  
18 felony other than second degree murder.

19 (b) Aggravating Factors. A defendant who at the time of  
20 the commission of the offense has attained the age of 18 or  
21 more and who has been found guilty of first degree murder may  
22 be sentenced to death if:

23 (1) the murdered individual was a peace officer or  
24 fireman killed in the course of performing his official  
25 duties, to prevent the performance of his official  
26 duties, or in retaliation for performing his official  
27 duties, and the defendant knew or should have known that  
28 the murdered individual was a peace officer or fireman;  
29 or

30 (2) the murdered individual was an employee of an  
31 institution or facility of the Department of Corrections,  
32 or any similar local correctional agency, killed in the

1 course of performing his official duties, to prevent the  
2 performance of his official duties, or in retaliation for  
3 performing his official duties, or the murdered  
4 individual was an inmate at such institution or facility  
5 and was killed on the grounds thereof, or the murdered  
6 individual was otherwise present in such institution or  
7 facility with the knowledge and approval of the chief  
8 administrative officer thereof; or

9 (3) the defendant has been convicted of murdering  
10 two or more individuals under subsection (a) of this  
11 Section or under any law of the United States or of any  
12 state which is substantially similar to subsection (a) of  
13 this Section regardless of whether the deaths occurred  
14 as the result of the same act or of several related or  
15 unrelated acts so long as the deaths were the result of  
16 either an intent to kill more than one person or of  
17 separate acts which the defendant knew would cause death  
18 or create a strong probability of death or great bodily  
19 harm to the murdered individual or another; or

20 (4) the murdered individual was killed as a result  
21 of the hijacking of an airplane, train, ship, bus or  
22 other public conveyance; or

23 (5) the defendant committed the murder pursuant to  
24 a contract, agreement or understanding by which he was to  
25 receive money or anything of value in return for  
26 committing the murder or procured another to commit the  
27 murder for money or anything of value; or

28 (6) the murdered individual was killed in the  
29 course of another felony if:

30 (a) the murdered individual:

31 (i) was actually killed by the defendant,

32 or

33 (ii) received physical injuries  
34 personally inflicted by the defendant

1 substantially contemporaneously with physical  
 2 injuries caused by one or more persons for  
 3 whose conduct the defendant is legally  
 4 accountable under Section 5-2 of this Code, and  
 5 the physical injuries inflicted by either the  
 6 defendant or the other person or persons for  
 7 whose conduct he is legally accountable caused  
 8 the death of the murdered individual; and

9 (b) in performing the acts which caused the  
 10 death of the murdered individual or which resulted  
 11 in physical injuries personally inflicted by the  
 12 defendant on the murdered individual under the  
 13 circumstances of subdivision (ii) of subparagraph  
 14 (a) of paragraph (6) of subsection (b) of this  
 15 Section, the defendant acted with the intent to kill  
 16 the murdered individual or with the knowledge that  
 17 his acts created a strong probability of death or  
 18 great bodily harm to the murdered individual or  
 19 another; and

20 (c) the other felony was an inherently violent  
 21 crime ~~one-of-the--following:--armed--robbery,--armed~~  
 22 ~~violence,--robbery,--predatory-criminal-sexual-assault~~  
 23 ~~of--a--child,--aggravated--criminal--sexual-assault,~~  
 24 ~~aggravated---kidnapping,---aggravated---vehicular~~  
 25 ~~hijacking,--forcible--detention,--arsen,--aggravated~~  
 26 ~~arsen,--aggravated--stalking,--burglary,--residential~~  
 27 ~~burglary,--home--invasion,--calculated-criminal-drug~~  
 28 ~~conspiracy-as-defined-in-Section-405-of-the-Illinois~~  
 29 ~~Controlled-Substances-Act,--streetgang-criminal--drug~~  
 30 ~~conspiracy--as--defined--in--Section--405.2--of--the~~  
 31 ~~Illinois--Controlled--Substances-Act,~~ or the attempt  
 32 to commit an inherently violent crime. In this  
 33 subparagraph (c), "inherently violent crime"  
 34 includes, but is not limited to, armed robbery,

1 robbery, predatory criminal sexual assault of a  
2 child, aggravated criminal sexual assault,  
3 aggravated kidnapping, aggravated vehicular  
4 hijacking, aggravated arson, aggravated stalking,  
5 residential burglary, and home invasion any-of-the  
6 felonies-listed-in-this-subsection-(e); or

7 (7) the murdered individual was under 12 years of  
8 age and the death resulted from exceptionally brutal or  
9 heinous behavior indicative of wanton cruelty; or

10 (8) the defendant committed the murder with intent  
11 to prevent the murdered individual from testifying or  
12 participating in any criminal investigation or  
13 prosecution or giving material assistance to the State in  
14 any investigation or prosecution, either against the  
15 defendant or another; or the defendant committed the  
16 murder because the murdered individual was a witness in  
17 any prosecution or gave material assistance to the State  
18 in any investigation or prosecution, either against the  
19 defendant or another; for purposes of this paragraph (8),  
20 "participating in any criminal investigation or  
21 prosecution" is intended to include those appearing in  
22 the proceedings in any capacity such as trial judges,  
23 prosecutors, defense attorneys, investigators, witnesses,  
24 or jurors; or

25 (9) the defendant, while committing an offense  
26 punishable under Sections 401, 401.1, 401.2, 405, 405.2,  
27 407 or 407.1 or subsection (b) of Section 404 of the  
28 Illinois Controlled Substances Act, or while engaged in a  
29 conspiracy or solicitation to commit such offense,  
30 intentionally killed an individual or counseled,  
31 commanded, induced, procured or caused the intentional  
32 killing of the murdered individual; or

33 (10) the defendant was incarcerated in an  
34 institution or facility of the Department of Corrections

1 at the time of the murder, and while committing an  
2 offense punishable as a felony under Illinois law, or  
3 while engaged in a conspiracy or solicitation to commit  
4 such offense, intentionally killed an individual or  
5 counseled, commanded, induced, procured or caused the  
6 intentional killing of the murdered individual; or

7 (11) the murder was committed in a cold, calculated  
8 and premeditated manner pursuant to a preconceived plan,  
9 scheme or design to take a human life by unlawful means,  
10 and the conduct of the defendant created a reasonable  
11 expectation that the death of a human being would result  
12 therefrom; or

13 (12) the murdered individual was an emergency  
14 medical technician - ambulance, emergency medical  
15 technician - intermediate, emergency medical technician -  
16 paramedic, ambulance driver, or other medical assistance  
17 or first aid personnel, employed by a municipality or  
18 other governmental unit, killed in the course of  
19 performing his official duties, to prevent the  
20 performance of his official duties, or in retaliation for  
21 performing his official duties, and the defendant knew or  
22 should have known that the murdered individual was an  
23 emergency medical technician - ambulance, emergency  
24 medical technician - intermediate, emergency medical  
25 technician - paramedic, ambulance driver, or other  
26 medical assistance or first aid personnel; or

27 (13) the defendant was a principal administrator,  
28 organizer, or leader of a calculated criminal drug  
29 conspiracy consisting of a hierarchical position of  
30 authority superior to that of all other members of the  
31 conspiracy, and the defendant counseled, commanded,  
32 induced, procured, or caused the intentional killing of  
33 the murdered person; or

34 (14) the murder was intentional and involved the

1       infliction of torture. For the purpose of this Section  
2       torture means the infliction of or subjection to extreme  
3       physical pain, motivated by an intent to increase or  
4       prolong the pain, suffering or agony of the victim; or

5               (15) the murder was committed as a result of the  
6       intentional discharge of a firearm by the defendant from  
7       a motor vehicle and the victim was not present within the  
8       motor vehicle; or

9               (16) the murdered individual was 60 years of age or  
10       older and the death resulted from exceptionally brutal or  
11       heinous behavior indicative of wanton cruelty; or

12               (17) the murdered individual was a disabled person  
13       and the defendant knew or should have known that the  
14       murdered individual was disabled. For purposes of this  
15       paragraph (17), "disabled person" means a person who  
16       suffers from a permanent physical or mental impairment  
17       resulting from disease, an injury, a functional disorder,  
18       or a congenital condition that renders the person  
19       incapable of adequately providing for his or her own  
20       health or personal care; or

21               (18) the murder was committed by reason of any  
22       person's activity as a community policing volunteer or to  
23       prevent any person from engaging in activity as a  
24       community policing volunteer; or

25               (19) the murdered individual was subject to an  
26       order of protection and the murder was committed by a  
27       person against whom the same order of protection was  
28       issued under the Illinois Domestic Violence Act of 1986;  
29       or

30               (20) the murdered individual was known by the  
31       defendant to be a teacher or other person employed in any  
32       school and the teacher or other employee is upon the  
33       grounds of a school or grounds adjacent to a school, or  
34       is in any part of a building used for school purposes; or

1           (21) the murder was committed by the defendant in  
2 connection with or as a result of the offense of  
3 terrorism as defined in Section 29D-30 of this Code.

4           (c) Consideration of factors in Aggravation and  
5 Mitigation.

6           The court shall consider, or shall instruct the jury to  
7 consider any aggravating and any mitigating factors which are  
8 relevant to the imposition of the death penalty. Aggravating  
9 factors may include but need not be limited to those factors  
10 set forth in subsection (b). Mitigating factors may include  
11 but need not be limited to the following:

12           (1) the defendant has no significant history of  
13 prior criminal activity;

14           (2) the murder was committed while the defendant  
15 was under the influence of extreme mental or emotional  
16 disturbance, although not such as to constitute a defense  
17 to prosecution;

18           (3) the murdered individual was a participant in  
19 the defendant's homicidal conduct or consented to the  
20 homicidal act;

21           (4) the defendant acted under the compulsion of  
22 threat or menace of the imminent infliction of death or  
23 great bodily harm;

24           (5) the defendant was not personally present during  
25 commission of the act or acts causing death;

26           (6) the defendant's background includes a history  
27 of extreme emotional or physical abuse;

28           (7) the defendant suffers from a reduced mental  
29 capacity.

30           (d) Separate sentencing hearing.

31           Where requested by the State, the court shall conduct a  
32 separate sentencing proceeding to determine the existence of  
33 factors set forth in subsection (b) and to consider any  
34 aggravating or mitigating factors as indicated in subsection

1 (c). The proceeding shall be conducted:

2 (1) before the jury that determined the defendant's  
3 guilt; or

4 (2) before a jury impanelled for the purpose of the  
5 proceeding if:

6 A. the defendant was convicted upon a plea of  
7 guilty; or

8 B. the defendant was convicted after a trial  
9 before the court sitting without a jury; or

10 C. the court for good cause shown discharges  
11 the jury that determined the defendant's guilt; or

12 (3) before the court alone if the defendant waives  
13 a jury for the separate proceeding.

14 (e) Evidence and Argument.

15 During the proceeding any information relevant to any of  
16 the factors set forth in subsection (b) may be presented by  
17 either the State or the defendant under the rules governing  
18 the admission of evidence at criminal trials. Any  
19 information relevant to any additional aggravating factors or  
20 any mitigating factors indicated in subsection (c) may be  
21 presented by the State or defendant regardless of its  
22 admissibility under the rules governing the admission of  
23 evidence at criminal trials. The State and the defendant  
24 shall be given fair opportunity to rebut any information  
25 received at the hearing.

26 (f) Proof.

27 The burden of proof of establishing the existence of any  
28 of the factors set forth in subsection (b) is on the State  
29 and shall not be satisfied unless established beyond a  
30 reasonable doubt.

31 (g) Procedure - Jury.

32 If at the separate sentencing proceeding the jury finds  
33 that none of the factors set forth in subsection (b) exists,  
34 the court shall sentence the defendant to a term of

1 imprisonment under Chapter V of the Unified Code of  
2 Corrections. If there is a unanimous finding by the jury  
3 that one or more of the factors set forth in subsection (b)  
4 exist, the jury shall consider aggravating and mitigating  
5 factors as instructed by the court and shall determine  
6 whether the sentence of death shall be imposed. If the jury  
7 determines unanimously, after weighing the factors in  
8 aggravation and mitigation, that death is the appropriate  
9 sentence ~~that--there-are-no-mitigating-factors-sufficient-to~~  
10 ~~preclude-the-imposition-of--the--death--sentence,~~ the court  
11 shall sentence the defendant to death. If the court does not  
12 concur with the jury determination that death is the  
13 appropriate sentence, the court shall set forth reasons in  
14 writing including what facts or circumstances the court  
15 relied upon, along with any relevant documents, that  
16 compelled the court to non-concur with the sentence. This  
17 document and any attachments shall be part of the record for  
18 appellate review. The court shall be bound by the jury's  
19 sentencing determination.

20 If after weighing the factors in aggravation and  
21 mitigation, one or more jurors determines that death is not  
22 the appropriate sentence, ~~Unless-the-jury--unanimously--finds~~  
23 ~~that--there--are-no-mitigating-factors-sufficient-to-preclude~~  
24 ~~the-imposition-of-the-death-sentence~~ the court shall sentence  
25 the defendant to a term of imprisonment under Chapter V of  
26 the Unified Code of Corrections.

27 (h) Procedure - No Jury.

28 In a proceeding before the court alone, if the court  
29 finds that none of the factors found in subsection (b)  
30 exists, the court shall sentence the defendant to a term of  
31 imprisonment under Chapter V of the Unified Code of  
32 Corrections.

33 If the Court determines that one or more of the factors  
34 set forth in subsection (b) exists, the Court shall consider

1 any aggravating and mitigating factors as indicated in  
2 subsection (c). If the Court determines, after weighing the  
3 factors in aggravation and mitigation, that death is the  
4 appropriate sentence ~~that--there--are--no--mitigating--factors~~  
5 ~~sufficient-to-preclude-the-imposition-of-the-death--sentence,~~  
6 the Court shall sentence the defendant to death.

7 If ~~Unless~~ the court finds that ~~there-are-no-mitigating~~  
8 ~~factors-sufficient-to-preclude-the-imposition-of-the-sentence~~  
9 ~~of death~~ is not the appropriate sentence, the court shall  
10 sentence the defendant to a term of imprisonment under  
11 Chapter V of the Unified Code of Corrections.

12 (h-5) Decertification as a capital case.

13 In a case in which the defendant has been found guilty of  
14 first degree murder by a judge or jury, or a case on remand  
15 for resentencing, and the State seeks the death penalty as an  
16 appropriate sentence, on the court's own motion or the  
17 written motion of the defendant, the court may decertify the  
18 case as a death penalty case if the court finds that the only  
19 evidence supporting the defendant's conviction is the  
20 uncorroborated testimony of an informant witness, as defined  
21 in Section 115-21 of the Code of Criminal Procedure of 1963,  
22 concerning the confession or admission of the defendant or  
23 that the sole evidence against the defendant is a single  
24 eyewitness or single accomplice without any other  
25 corroborating evidence. If the court decertifies the case as  
26 a capital case under either of the grounds set forth above,  
27 the court shall issue a written finding. The State may  
28 pursue its right to appeal the decertification pursuant to  
29 Supreme Court Rule 604(a)(1). If the court does not  
30 decertify the case as a capital case, the matter shall  
31 proceed to the eligibility phase of the sentencing hearing.

32 (i) Appellate Procedure.

33 The conviction and sentence of death shall be subject to  
34 automatic review by the Supreme Court. Such review shall be

1 in accordance with rules promulgated by the Supreme Court.  
2 The Illinois Supreme Court may overturn the death sentence,  
3 and order the imposition of imprisonment under Chapter V of  
4 the Unified Code of Corrections if the court finds that the  
5 death sentence is fundamentally unjust as applied to the  
6 particular case. If the Illinois Supreme Court finds that the  
7 death sentence is fundamentally unjust as applied to the  
8 particular case, independent of any procedural grounds for  
9 relief, the Illinois Supreme Court shall issue a written  
10 opinion explaining this finding.

11 (j) Disposition of reversed death sentence.

12 In the event that the death penalty in this Act is held  
13 to be unconstitutional by the Supreme Court of the United  
14 States or of the State of Illinois, any person convicted of  
15 first degree murder shall be sentenced by the court to a term  
16 of imprisonment under Chapter V of the Unified Code of  
17 Corrections.

18 In the event that any death sentence pursuant to the  
19 sentencing provisions of this Section is declared  
20 unconstitutional by the Supreme Court of the United States or  
21 of the State of Illinois, the court having jurisdiction over  
22 a person previously sentenced to death shall cause the  
23 defendant to be brought before the court, and the court shall  
24 sentence the defendant to a term of imprisonment under  
25 Chapter V of the Unified Code of Corrections.

26 (k) Guidelines for seeking the death penalty.

27 The Attorney General and State's Attorneys Association  
28 shall consult on voluntary guidelines for procedures  
29 governing whether or not to seek the death penalty. The  
30 guidelines do not have the force of law and are only advisory  
31 in nature.

32 (Source: P.A. 91-357, eff. 7-29-99; 91-434, eff. 1-1-00;  
33 92-854, eff. 12-5-02.)

1 (720 ILCS 5/14-3) (from Ch. 38, par. 14-3)

2 Sec. 14-3. Exemptions. The following activities shall  
3 be exempt from the provisions of this Article:

4 (a) Listening to radio, wireless and television  
5 communications of any sort where the same are publicly made;

6 (b) Hearing conversation when heard by employees of any  
7 common carrier by wire incidental to the normal course of  
8 their employment in the operation, maintenance or repair of  
9 the equipment of such common carrier by wire so long as no  
10 information obtained thereby is used or divulged by the  
11 hearer;

12 (c) Any broadcast by radio, television or otherwise  
13 whether it be a broadcast or recorded for the purpose of  
14 later broadcasts of any function where the public is in  
15 attendance and the conversations are overheard incidental to  
16 the main purpose for which such broadcasts are then being  
17 made;

18 (d) Recording or listening with the aid of any device to  
19 any emergency communication made in the normal course of  
20 operations by any federal, state or local law enforcement  
21 agency or institutions dealing in emergency services,  
22 including, but not limited to, hospitals, clinics, ambulance  
23 services, fire fighting agencies, any public utility,  
24 emergency repair facility, civilian defense establishment or  
25 military installation;

26 (e) Recording the proceedings of any meeting required to  
27 be open by the Open Meetings Act, as amended;

28 (f) Recording or listening with the aid of any device to  
29 incoming telephone calls of phone lines publicly listed or  
30 advertised as consumer "hotlines" by manufacturers or  
31 retailers of food and drug products. Such recordings must be  
32 destroyed, erased or turned over to local law enforcement  
33 authorities within 24 hours from the time of such recording  
34 and shall not be otherwise disseminated. Failure on the part

1 of the individual or business operating any such recording or  
2 listening device to comply with the requirements of this  
3 subsection shall eliminate any civil or criminal immunity  
4 conferred upon that individual or business by the operation  
5 of this Section;

6 (g) With prior notification to the State's Attorney of  
7 the county in which it is to occur, recording or listening  
8 with the aid of any device to any conversation where a law  
9 enforcement officer, or any person acting at the direction of  
10 law enforcement, is a party to the conversation and has  
11 consented to it being intercepted or recorded under  
12 circumstances where the use of the device is necessary for  
13 the protection of the law enforcement officer or any person  
14 acting at the direction of law enforcement, in the course of  
15 an investigation of a forcible felony, a felony violation of  
16 the Illinois Controlled Substances Act, a felony violation of  
17 the Cannabis Control Act, or any "streetgang related" or  
18 "gang-related" felony as those terms are defined in the  
19 Illinois Streetgang Terrorism Omnibus Prevention Act. Any  
20 recording or evidence derived as the result of this exemption  
21 shall be inadmissible in any proceeding, criminal, civil or  
22 administrative, except (i) where a party to the conversation  
23 suffers great bodily injury or is killed during such  
24 conversation, or (ii) when used as direct impeachment of a  
25 witness concerning matters contained in the interception or  
26 recording. The Director of the Department of State Police  
27 shall issue regulations as are necessary concerning the use  
28 of devices, retention of tape recordings, and reports  
29 regarding their use;

30 (g-5) With approval of the State's Attorney of the  
31 county in which it is to occur, recording or listening with  
32 the aid of any device to any conversation where a law  
33 enforcement officer, or any person acting at the direction of  
34 law enforcement, is a party to the conversation and has

1 consented to it being intercepted or recorded in the course  
2 of an investigation of any offense defined in Article 29D of  
3 this Code. In all such cases, an application for an order  
4 approving the previous or continuing use of an eavesdropping  
5 device must be made within 48 hours of the commencement of  
6 such use. In the absence of such an order, or upon its  
7 denial, any continuing use shall immediately terminate. The  
8 Director of State Police shall issue rules as are necessary  
9 concerning the use of devices, retention of tape recordings,  
10 and reports regarding their use.

11 Any recording or evidence obtained or derived in the  
12 course of an investigation of any offense defined in Article  
13 29D of this Code shall, upon motion of the State's Attorney  
14 or Attorney General prosecuting any violation of Article 29D,  
15 be reviewed in camera with notice to all parties present by  
16 the court presiding over the criminal case, and, if ruled by  
17 the court to be relevant and otherwise admissible, it shall  
18 be admissible at the trial of the criminal case.

19 This subsection (g-5) is inoperative on and after January  
20 1, 2005. No conversations recorded or monitored pursuant to  
21 this subsection (g-5) shall be inadmissible in a court of law  
22 by virtue of the repeal of this subsection (g-5) on January  
23 1, 2005<sub>i</sub>.

24 (h) Recordings made simultaneously with a video  
25 recording of an oral conversation between a peace officer,  
26 who has identified his or her office, and a person stopped  
27 for an investigation of an offense under the Illinois Vehicle  
28 Code;

29 (i) Recording of a conversation made by or at the  
30 request of a person, not a law enforcement officer or agent  
31 of a law enforcement officer, who is a party to the  
32 conversation, under reasonable suspicion that another party  
33 to the conversation is committing, is about to commit, or has  
34 committed a criminal offense against the person or a member

1 of his or her immediate household, and there is reason to  
2 believe that evidence of the criminal offense may be obtained  
3 by the recording; and

4 (j) The use of a telephone monitoring device by either  
5 (1) a corporation or other business entity engaged in  
6 marketing or opinion research or (2) a corporation or other  
7 business entity engaged in telephone solicitation, as defined  
8 in this subsection, to record or listen to oral telephone  
9 solicitation conversations or marketing or opinion research  
10 conversations by an employee of the corporation or other  
11 business entity when:

12 (i) the monitoring is used for the purpose of  
13 service quality control of marketing or opinion research  
14 or telephone solicitation, the education or training of  
15 employees or contractors engaged in marketing or opinion  
16 research or telephone solicitation, or internal research  
17 related to marketing or opinion research or telephone  
18 solicitation; and

19 (ii) the monitoring is used with the consent of at  
20 least one person who is an active party to the marketing  
21 or opinion research conversation or telephone  
22 solicitation conversation being monitored.

23 No communication or conversation or any part, portion, or  
24 aspect of the communication or conversation made, acquired,  
25 or obtained, directly or indirectly, under this exemption  
26 (j), may be, directly or indirectly, furnished to any law  
27 enforcement officer, agency, or official for any purpose or  
28 used in any inquiry or investigation, or used, directly or  
29 indirectly, in any administrative, judicial, or other  
30 proceeding, or divulged to any third party.

31 When recording or listening authorized by this subsection  
32 (j) on telephone lines used for marketing or opinion research  
33 or telephone solicitation purposes results in recording or  
34 listening to a conversation that does not relate to marketing

1 or opinion research or telephone solicitation; the person  
2 recording or listening shall, immediately upon determining  
3 that the conversation does not relate to marketing or opinion  
4 research or telephone solicitation, terminate the recording  
5 or listening and destroy any such recording as soon as is  
6 practicable.

7 Business entities that use a telephone monitoring or  
8 telephone recording system pursuant to this exemption (j)  
9 shall provide current and prospective employees with notice  
10 that the monitoring or recordings may occur during the course  
11 of their employment. The notice shall include prominent  
12 signage notification within the workplace.

13 Business entities that use a telephone monitoring or  
14 telephone recording system pursuant to this exemption (j)  
15 shall provide their employees or agents with access to  
16 personal-only telephone lines which may be pay telephones,  
17 that are not subject to telephone monitoring or telephone  
18 recording.

19 For the purposes of this subsection (j), "telephone  
20 solicitation" means a communication through the use of a  
21 telephone by live operators:

- 22 (i) soliciting the sale of goods or services;
- 23 (ii) receiving orders for the sale of goods or  
24 services;
- 25 (iii) assisting in the use of goods or services; or
- 26 (iv) engaging in the solicitation, administration,  
27 or collection of bank or retail credit accounts.

28 For the purposes of this subsection (j), "marketing or  
29 opinion research" means a marketing or opinion research  
30 interview conducted by a live telephone interviewer engaged  
31 by a corporation or other business entity whose principal  
32 business is the design, conduct, and analysis of polls and  
33 surveys measuring the opinions, attitudes, and responses of  
34 respondents toward products and services, or social or

1 political issues, or both; and

2 (k) Recording the interview or statement of any person  
3 when the person knows that the interview is being conducted  
4 by a law enforcement officer or prosecutor and the interview  
5 takes place at a police station that is currently  
6 participating in the Custodial Interview Pilot Program  
7 established under the Illinois Criminal Justice Information  
8 Act.

9 (Source: P.A. 91-357, eff. 7-29-99; 92-854, eff. 12-5-02.)

10 Section 15. The Code of Criminal Procedure of 1963 is  
11 amended by changing Sections 114-13, 116-3, 122-1, and  
12 122-2.1 and adding Article 107A and Sections 114-15, 115-21,  
13 115-22, 116-5, and 122-2.2 as follows:

14 (725 ILCS 5/107A Art. heading new)

15 ARTICLE 107A. LINEUP AND PHOTO SPREAD PROCEDURE

16 (725 ILCS 5/107A-5 new)

17 Sec. 107A-5. Lineup and photo spread procedure.

18 (a) All lineups shall be photographed or otherwise  
19 recorded. These photographs shall be disclosed to the accused  
20 and his or her defense counsel during discovery proceedings  
21 as provided in Illinois Supreme Court Rules. All photographs  
22 of suspects shown to an eyewitness during the photo spread  
23 shall be disclosed to the accused and his or her defense  
24 counsel during discovery proceedings as provided in Illinois  
25 Supreme Court Rules.

26 (b) Each eyewitness who views a lineup or photo spread  
27 shall sign a form containing the following information:

28 (1) The suspect might not be in the lineup or photo  
29 spread and the eyewitness is not obligated to make an  
30 identification.

31 (2) The eyewitness should not assume that the

1 person administering the lineup or photo spread knows  
2 which person is the suspect in the case.

3 (c) Suspects in a lineup or photo spread should not  
4 appear to be substantially different from "fillers" or  
5 "distracters" in the lineup or photo spread, based on the  
6 eyewitness' previous description of the perpetrator, or based  
7 on other factors that would draw attention to the suspect.

8 (725 ILCS 5/107A-10 new)

9 Sec. 107A-10. Pilot study on sequential lineup  
10 procedures.

11 (a) Legislative intent. Because the goal of a police  
12 investigation is to apprehend the person or persons  
13 responsible for committing a crime, it is useful to conduct a  
14 pilot study in the field on the effectiveness of the  
15 sequential method for lineup procedures.

16 (b) Establishment of pilot jurisdictions. The Department  
17 of State Police shall select 3 police departments to  
18 participate in a one-year pilot study on the effectiveness of  
19 the sequential lineup method for photo and live lineup  
20 procedures. One such pilot jurisdiction shall be a police  
21 district within a police department in a municipality whose  
22 population is at least 500,000 residents; one such pilot  
23 jurisdiction shall be a police department in a municipality  
24 whose population is at least 100,000 but less than 500,000;  
25 and one such pilot jurisdiction shall be a police department  
26 in a municipality whose population is less than 100,000. All  
27 such pilot jurisdictions shall be selected no later than  
28 January 1, 2004.

29 (c) Sequential lineup procedures in pilot jurisdictions.  
30 For any offense alleged to have been committed in a pilot  
31 jurisdiction on or after January 1, 2004, selected lineup  
32 identification procedure shall be presented in the sequential  
33 method in which a witness is shown lineup participants one at

1 a time, using the following procedures:

2 (1) The witness shall be requested to state whether  
3 the individual shown is the perpetrator of the crime  
4 prior to viewing the next lineup participant. Only one  
5 member of the lineup shall be a suspect and the remainder  
6 shall be "fillers" who are not suspects but fit the  
7 general description of the offender without the suspect  
8 unduly standing out;

9 (2) The lineup administrator shall be someone who  
10 is not aware of which member of the lineup is the suspect  
11 in the case; and

12 (3) Prior to presenting the lineup using the  
13 sequential method the lineup administrator shall:

14 (A) Inform the witness that the perpetrator  
15 may or may not be among those shown, and the witness  
16 should not feel compelled to make an identification;

17 (B) Inform the witness that he or she will  
18 view individuals one at a time and will be requested  
19 to state whether the individual shown is the  
20 perpetrator of the crime, prior to viewing the next  
21 lineup participant; and

22 (C) Ask the witness to state in his or her own  
23 words how sure he or she is that the person  
24 identified is the actual offender. During the  
25 statement, or as soon thereafter as reasonably  
26 possible, the witness's actual words shall be  
27 documented.

28 (d) Application. This Section applies to selected live  
29 lineups that are composed and presented at a police station  
30 and to selected photo lineups regardless of where presented;  
31 provided that this Section does not apply in police  
32 investigations in which a spontaneous identification is  
33 possible and no lineup procedure is being used. This Section  
34 does not affect the right to counsel afforded by the U.S. or

1 Illinois Constitutions or State law at any stage of a  
2 criminal proceeding.

3 (e) Selection of lineups. The participating  
4 jurisdictions shall develop a protocol for the selection and  
5 administration of lineups which is practical, designed to  
6 elicit information for comparative evaluation purposes, and  
7 is consistent with objective scientific research methodology.

8 (f) Training and administrators. The Department of State  
9 Police shall offer training to police officers and any other  
10 appropriate personnel on the sequential method of conducting  
11 lineup procedures in the pilot jurisdictions and the  
12 requirements of this Section. The Department of State Police  
13 may seek funding for training and administration from the  
14 Illinois Criminal Justice Information Authority and the  
15 Illinois Law Enforcement Training Standards Board if  
16 necessary.

17 (g) Report on the pilot study. The Department of State  
18 Police shall gather information from each of the  
19 participating police departments selected as a pilot  
20 jurisdiction with respect to the effectiveness of the  
21 sequential method for lineup procedures and shall file a  
22 report of its findings with the Governor and the General  
23 Assembly no later than April 1, 2005.

24 (725 ILCS 5/114-13) (from Ch. 38, par. 114-13)

25 Sec. 114-13. Discovery in criminal cases.

26 (a) Discovery procedures in criminal cases shall be in  
27 accordance with Supreme Court Rules.

28 (b) Any public investigative, law enforcement, or other  
29 public agency responsible for investigating any homicide  
30 offense or participating in an investigation of any homicide  
31 offense, other than defense investigators, shall provide to  
32 the authority prosecuting the offense all investigative  
33 material, including but not limited to reports, memoranda,

1 and field notes, that have been generated by or have come  
2 into the possession of the investigating agency concerning  
3 the homicide offense being investigated. In addition, the  
4 investigating agency shall provide to the prosecuting  
5 authority any material or information, including but not  
6 limited to reports, memoranda, and field notes, within its  
7 possession or control that would tend to negate the guilt of  
8 the accused of the offense charged or reduce his or her  
9 punishment for the homicide offense. Every investigative and  
10 law enforcement agency in this State shall adopt policies to  
11 ensure compliance with these standards. Any investigative,  
12 law enforcement, or other public agency responsible for  
13 investigating any "non-homicide felony" offense or  
14 participating in an investigation of any "non-homicide  
15 felony" offense, other than defense investigators, shall  
16 provide to the authority prosecuting the offense all  
17 investigative material, including but not limited to reports  
18 and memoranda that have been generated by or have come into  
19 the possession of the investigating agency concerning the  
20 "non-homicide felony" offense being investigated. In  
21 addition, the investigating agency shall provide to the  
22 prosecuting authority any material or information, including  
23 but not limited to reports and memoranda, within its  
24 possession or control that would tend to negate the guilt of  
25 the accused of the "non-homicide felony" offense charged or  
26 reduce his or her punishment for the "non-homicide felony"  
27 offense. This obligation to furnish exculpatory evidence  
28 exists whether the information was recorded or documented in  
29 any form. Every investigative and law enforcement agency in  
30 this State shall adopt policies to ensure compliance with  
31 these standards.

32 (Source: Laws 1963, p. 2836.)

33 (725 ILCS 5/114-15 new)

1       Sec. 114-15. Mental retardation.

2       (a) In a first degree murder case in which the State  
3 seeks the death penalty as an appropriate sentence, any party  
4 may raise the issue of the defendant's mental retardation by  
5 motion. A defendant wishing to raise the issue of his or her  
6 mental retardation shall provide written notice to the State  
7 and the court as soon as the defendant reasonably believes  
8 such issue will be raised.

9       (b) The issue of the defendant's mental retardation  
10 shall be determined in a pretrial hearing. The court shall be  
11 the fact finder on the issue of the defendant's mental  
12 retardation and shall determine the issue by a preponderance  
13 of evidence in which the moving party has the burden of  
14 proof. The court may appoint an expert in the field of mental  
15 retardation. The defendant and the State may offer experts  
16 from the field of mental retardation. The court shall  
17 determine admissibility of evidence and qualification as an  
18 expert.

19       (c) If after a plea of guilty to first degree murder, or  
20 a finding of guilty of first degree murder in a bench trial,  
21 or a verdict of guilty for first degree murder in a jury  
22 trial, or on a matter remanded from the Supreme Court for  
23 sentencing for first degree murder, and the State seeks the  
24 death penalty as an appropriate sentence, the defendant may  
25 raise the issue of defendant's mental retardation not at  
26 eligibility but at aggravation and mitigation. The defendant  
27 and the State may offer experts from the field of mental  
28 retardation. The court shall determine admissibility of  
29 evidence and qualification as an expert.

30       (d) In determining whether the defendant is mentally  
31 retarded, the mental retardation must have manifested itself  
32 by the age of 18. IQ tests and psychometric tests  
33 administered to the defendant must be the kind and type  
34 recognized by experts in the field of mental retardation. In

1 order for the defendant to be considered mentally retarded, a  
2 low IQ must be accompanied by significant deficits in  
3 adaptive behavior in at least 2 of the following skill areas:  
4 communication, self-care, social or interpersonal skills,  
5 home living, self-direction, academics, health and safety,  
6 use of community resources, and work. An intelligence  
7 quotient (IQ) of 75 or below is presumptive evidence of  
8 mental retardation.

9 (e) Evidence of mental retardation that did not result  
10 in disqualifying the case as a capital case, may be  
11 introduced as evidence in mitigation during a capital  
12 sentencing hearing. A failure of the court to determine that  
13 the defendant is mentally retarded does not preclude the  
14 court during trial from allowing evidence relating to mental  
15 disability should the court deem it appropriate.

16 (f) If the court determines at a pretrial hearing or  
17 after remand that a capital defendant is mentally retarded,  
18 and the State does not appeal pursuant to Supreme Court Rule  
19 604, the case shall no longer be considered a capital case  
20 and the procedural guidelines established for capital cases  
21 shall no longer be applicable to the defendant. In that  
22 case, the defendant shall be sentenced under the sentencing  
23 provisions of Chapter V of the Unified Code of Corrections.

24 (725 ILCS 5/115-21 new)

25 Sec. 115-21. Informant testimony.

26 (a) For the purposes of this Section, "informant" means  
27 someone who is purporting to testify about admissions made to  
28 him or her by the accused while incarcerated in a penal  
29 institution contemporaneously.

30 (b) This Section applies to any capital case in which  
31 the prosecution attempts to introduce evidence of  
32 incriminating statements made by the accused to or overheard  
33 by an informant.

1       (c) In any case under this Section, the prosecution  
2 shall timely disclose in discovery:

3           (1) the complete criminal history of the informant;

4           (2) any deal, promise, inducement, or benefit that  
5 the offering party has made or will make in the future to  
6 the informant;

7           (3) the statements made by the accused;

8           (4) the time and place of the statements, the time  
9 and place of their disclosure to law enforcement  
10 officials, and the names of all persons who were present  
11 when the statements were made;

12           (5) whether at any time the informant recanted that  
13 testimony or statement and, if so, the time and place of  
14 the recantation, the nature of the recantation, and the  
15 names of the persons who were present at the recantation;

16           (6) other cases in which the informant testified,  
17 provided that the existence of such testimony can be  
18 ascertained through reasonable inquiry and whether the  
19 informant received any promise, inducement, or benefit in  
20 exchange for or subsequent to that testimony or  
21 statement; and

22           (7) any other information relevant to the  
23 informant's credibility.

24       (d) In any case under this Section, the prosecution must  
25 timely disclose its intent to introduce the testimony of an  
26 informant. The court shall conduct a hearing to determine  
27 whether the testimony of the informant is reliable, unless  
28 the defendant waives such a hearing. If the prosecution  
29 fails to show by a preponderance of the evidence that the  
30 informant's testimony is reliable, the court shall not allow  
31 the testimony to be heard at trial. At this hearing, the  
32 court shall consider the factors enumerated in subsection (c)  
33 as well as any other factors relating to reliability.

34       (e) A hearing required under subsection (d) does not

1 apply to statements covered under subsection (b) that are  
2 lawfully recorded.

3 (f) This Section applies to all death penalty  
4 prosecutions initiated on or after the effective date of this  
5 amendatory Act of the 93rd General Assembly.

6 (725 ILCS 5/115-22 new)

7 Sec. 115-22. Witness inducements. When the State  
8 intends to introduce the testimony of a witness in a capital  
9 case, the State shall, before trial, disclose to the  
10 defendant and to his or her defense counsel the following  
11 information, which shall be reduced to writing:

12 (1) whether the witness has received or been  
13 promised anything, including pay, immunity from  
14 prosecution, leniency in prosecution, or personal  
15 advantage, in exchange for testimony;

16 (2) any other case in which the witness testified  
17 or offered statements against an individual but was not  
18 called, and whether the statements were admitted in the  
19 case, and whether the witness received any deal, promise,  
20 inducement, or benefit in exchange for that testimony or  
21 statement; provided that the existence of such testimony  
22 can be ascertained through reasonable inquiry;

23 (3) whether the witness has ever changed his or her  
24 testimony;

25 (4) the criminal history of the witness; and

26 (5) any other evidence relevant to the credibility  
27 of the witness.

28 (725 ILCS 5/116-3)

29 Sec. 116-3. Motion for fingerprint or forensic testing  
30 not available at trial regarding actual innocence.

31 (a) A defendant may make a motion before the trial court  
32 that entered the judgment of conviction in his or her case

1 for the performance of fingerprint or forensic DNA testing,  
2 including comparison analysis of genetic marker groupings of  
3 the evidence collected by criminal justice agencies pursuant  
4 to the alleged offense, to those of the defendant, to those  
5 of other forensic evidence, and to those maintained under  
6 subsection (f) of Section 5-4-3 of the Unified Code of  
7 Corrections, on evidence that was secured in relation to the  
8 trial which resulted in his or her conviction, but which was  
9 not subject to the testing which is now requested because the  
10 technology for the testing was not available at the time of  
11 trial. Reasonable notice of the motion shall be served upon  
12 the State.

13 (b) The defendant must present a prima facie case that:

14 (1) identity was the issue in the trial which  
15 resulted in his or her conviction; and

16 (2) the evidence to be tested has been subject to a  
17 chain of custody sufficient to establish that it has not  
18 been substituted, tampered with, replaced, or altered in  
19 any material aspect.

20 (c) The trial court shall allow the testing under  
21 reasonable conditions designed to protect the State's  
22 interests in the integrity of the evidence and the testing  
23 process upon a determination that:

24 (1) the result of the testing has the scientific  
25 potential to produce new, noncumulative evidence  
26 materially relevant to the defendant's assertion of  
27 actual innocence even though the results may not  
28 completely exonerate the defendant;

29 (2) the testing requested employs a scientific  
30 method generally accepted within the relevant scientific  
31 community.

32 (Source: P.A. 90-141, eff. 1-1-98.)

33 (725 ILCS 5/116-5 new)

1       Sec. 116-5. Motion for DNA database search (genetic  
2 marker groupings comparison analysis).

3       (a) Upon motion by a defendant charged with any offense  
4 where DNA evidence may be material to the defense  
5 investigation or relevant at trial, a court may order a DNA  
6 database search by the Department of State Police. Such  
7 analysis may include comparing:

8           (1) the genetic profile from forensic evidence that  
9 was secured in relation to the trial against the genetic  
10 profile of the defendant,

11           (2) the genetic profile of items of forensic  
12 evidence secured in relation to trial to the genetic  
13 profile of other forensic evidence secured in relation to  
14 trial, or

15           (3) the genetic profiles referred to in  
16 subdivisions (1) and (2) against:

17                   (i) genetic profiles of offenders maintained  
18 under subsection (f) of Section 5-4-3 of the Unified  
19 Code of Corrections, or

20                   (ii) genetic profiles, including but not  
21 limited to, profiles from unsolved crimes maintained  
22 in state or local DNA databases by law enforcement  
23 agencies.

24       (b) If appropriate federal criteria are met, the court  
25 may order the Department of State Police to request the  
26 National DNA index system to search its database of genetic  
27 profiles.

28       (c) If requested by the defense, a defense  
29 representative shall be allowed to view any genetic marker  
30 grouping analysis conducted by the Department of State  
31 Police. The defense shall be provided with copies of all  
32 documentation, correspondence, including digital  
33 correspondence, notes, memoranda, and reports generated in  
34 relation to the analysis.

1        (d) Reasonable notice of the motion shall be served upon  
2 the State.

3            (725 ILCS 5/122-1) (from Ch. 38, par. 122-1)  
4            Sec. 122-1. Petition in the trial court.

5            (a) Any person imprisoned in the penitentiary may  
6 institute a proceeding under this Article if the person who  
7 asserts that:

8            (1) in the proceedings which resulted in his or her  
9 conviction there was a substantial denial of his or her  
10 rights under the Constitution of the United States or of  
11 the State of Illinois or both; ~~or may--institute--a~~  
12 proceeding-under-this-Article.

13            (2) the death penalty was imposed and there is  
14 newly discovered evidence not available to the person at  
15 the time of the proceeding that resulted in his or her  
16 conviction that establishes a substantial basis to  
17 believe that the defendant is actually innocent by clear  
18 and convincing evidence.

19            (a-5) A proceeding under paragraph (2) of subsection (a)  
20 may be commenced within a reasonable period of time after the  
21 person's conviction notwithstanding any other provisions of  
22 this Article. In such a proceeding regarding actual  
23 innocence, if the court determines the petition is frivolous  
24 or is patently without merit, it shall dismiss the petition  
25 in a written order, specifying the findings of fact and  
26 conclusions of law it made in reaching its decision. Such  
27 order of dismissal is a final judgment and shall be served  
28 upon the petitioner by certified mail within 10 days of its  
29 entry.

30            (b) The proceeding shall be commenced by filing with the  
31 clerk of the court in which the conviction took place a  
32 petition (together with a copy thereof) verified by  
33 affidavit. Petitioner shall also serve another copy upon the

1 State's Attorney by any of the methods provided in Rule 7 of  
2 the Supreme Court. The clerk shall docket the petition for  
3 consideration by the court pursuant to Section 122-2.1 upon  
4 his or her receipt thereof and bring the same promptly to the  
5 attention of the court.

6 (c) Except as otherwise provided in subsection (a-5), if  
7 the petitioner is under sentence of death, no proceedings  
8 under this Article shall be commenced more than 6 months  
9 after the denial of a petition for certiorari to the United  
10 States Supreme Court on direct appeal, or more than 6 months  
11 from the date for filing such a petition if none is filed,  
12 unless the petitioner alleges facts showing that the delay  
13 was not due to his or her culpable negligence.

14 When a defendant has a sentence other than death, no  
15 proceedings under this Article shall be commenced more than 6  
16 months after the denial of the Petition for Leave to Appeal  
17 to the Illinois Supreme Court, or more than 6 months from the  
18 date for filing such a petition if none is filed, unless the  
19 petitioner alleges facts showing that the delay was not due  
20 to his or her culpable negligence.

21 This limitation does not apply to a petition advancing a  
22 claim of actual innocence. no-proceedings-under-this--Article  
23 shall--be--commenced-more-than-6-months-after-the-denial-of-a  
24 petition-for-leave--to-appeal-or-the-date-for-filing--such--a  
25 petition--if--none--is--filed--or-more-than-45-days-after-the  
26 defendant-files-his--or--her--brief--in--the--appeal--of--the  
27 sentence--before--the-Illinois-Supreme-Court-(or-more-than-45  
28 days-after-the-deadline-for-the--filing--of--the--defendant's  
29 brief--with--the-Illinois-Supreme-Court-if-no-brief-is-filed)  
30 or-3-years-from-the-date-of-conviction, whichever is--sooner,  
31 unless--the--petitioner--alleges-facts-showing-that-the-delay  
32 was-not-due-to-his-or-her-culpable-negligence.

33 (d) A person seeking relief by filing a petition under  
34 this Section must specify in the petition or its heading that

1 it is filed under this Section. A trial court that has  
2 received a petition complaining of a conviction or sentence  
3 that fails to specify in the petition or its heading that it  
4 is filed under this Section need not evaluate the petition to  
5 determine whether it could otherwise have stated some grounds  
6 for relief under this Article.

7 (e) A proceeding under this Article may not be commenced  
8 on behalf of a defendant who has been sentenced to death  
9 without the written consent of the defendant, unless the  
10 defendant, because of a mental or physical condition, is  
11 incapable of asserting his or her own claim.

12 (Source: P.A. 89-284, eff. 1-1-96; 89-609, eff. 1-1-97;  
13 89-684, eff. 6-1-97; 90-14, eff. 7-1-97.)

14 (725 ILCS 5/122-2.1) (from Ch. 38, par. 122-2.1)

15 Sec. 122-2.1. (a) Within 90 days after the filing and  
16 docketing of each petition, the court shall examine such  
17 petition and enter an order thereon pursuant to this Section.

18 (1) If the petitioner is under sentence of death  
19 and is without counsel and alleges that he is without  
20 means to procure counsel, he shall state whether or not  
21 he wishes counsel to be appointed to represent him. If  
22 appointment of counsel is so requested, the court shall  
23 appoint counsel if satisfied that the petitioner has no  
24 means to procure counsel.

25 (2) If the petitioner is sentenced to imprisonment  
26 and the court determines the petition is frivolous or is  
27 patently without merit, it shall dismiss the petition in  
28 a written order, specifying the findings of fact and  
29 conclusions of law it made in reaching its decision.  
30 Such order of dismissal is a final judgment and shall be  
31 served upon the petitioner by certified mail within 10  
32 days of its entry.

33 (b) If the petition is not dismissed pursuant to this

1 Section, the court shall order the petition to be docketed  
2 for further consideration in accordance with Sections 122-4  
3 through 122-6. If the petitioner is under sentence of death,  
4 the court shall order the petition to be docketed for further  
5 consideration and hearing within one year of the filing of  
6 the petition. Continuances may be granted as the court deems  
7 appropriate.

8 (c) In considering a petition pursuant to this Section,  
9 the court may examine the court file of the proceeding in  
10 which the petitioner was convicted, any action taken by an  
11 appellate court in such proceeding and any transcripts of  
12 such proceeding.

13 (Source: P.A. 86-655; 87-904.)

14 (725 ILCS 5/122-2.2 new)

15 Sec. 122-2.2. Mental retardation and post-conviction  
16 relief.

17 (a) In cases where no determination of mental  
18 retardation was made and a defendant has been convicted of  
19 first-degree murder, sentenced to death, and is in custody  
20 pending execution of the sentence of death, the following  
21 procedures shall apply:

22 (1) Notwithstanding any other provision of law or  
23 rule of court, a defendant may seek relief from the death  
24 sentence through a petition for post-conviction relief  
25 under this Article alleging that the defendant was  
26 mentally retarded as defined in Section 114-15 at the  
27 time the offense was alleged to have been committed.

28 (2) The petition must be filed within 180 days of  
29 the effective date of this amendatory Act of the 93rd  
30 General Assembly or within 180 days of the issuance of  
31 the mandate by the Illinois Supreme Court setting the  
32 date of execution, whichever is later.

33 (3) All other provisions of this Article governing

1 petitions for post-conviction relief shall apply to a  
2 petition for post-conviction relief alleging mental  
3 retardation.

4 Section 20. The Capital Crimes Litigation Act is amended  
5 by changing Sections 15 and 19 as follows:

6 (725 ILCS 124/15)

7 (Section scheduled to be repealed on July 1, 2004)

8 Sec. 15. Capital Litigation Trust Fund.

9 (a) The Capital Litigation Trust Fund is created as a  
10 special fund in the State Treasury. The Trust Fund shall be  
11 administered by the State Treasurer to provide moneys for the  
12 appropriations to be made, grants to be awarded, and  
13 compensation and expenses to be paid under this Act. All  
14 interest earned from the investment or deposit of moneys  
15 accumulated in the Trust Fund shall, under Section 4.1 of the  
16 State Finance Act, be deposited into the Trust Fund.

17 (b) Moneys deposited into the Trust Fund shall not be  
18 considered general revenue of the State of Illinois.

19 (c) Moneys deposited into the Trust Fund shall be used  
20 exclusively for the purposes of providing funding for the  
21 prosecution and defense of capital cases as provided in this  
22 Act and shall not be appropriated, loaned, or in any manner  
23 transferred to the General Revenue Fund of the State of  
24 Illinois.

25 (d) Every fiscal year the State Treasurer shall transfer  
26 from the General Revenue Fund to the Capital Litigation Trust  
27 Fund an amount equal to the full amount of moneys  
28 appropriated by the General Assembly (both by original and  
29 supplemental appropriation), less any unexpended balance from  
30 the previous fiscal year, from the Capital Litigation Trust  
31 Fund for the specific purpose of making funding available for  
32 the prosecution and defense of capital cases. The Public

1 Defender and State's Attorney in Cook County, the State  
2 Appellate Defender, the State's Attorneys Appellate  
3 Prosecutor, and the Attorney General shall make annual  
4 requests for appropriations from the Trust Fund.

5 (1) The Public Defender in Cook County shall  
6 request appropriations to the State Treasurer for  
7 expenses incurred by the Public Defender and for funding  
8 for private appointed defense counsel in Cook County.

9 (2) The State's Attorney in Cook County shall  
10 request an appropriation to the State Treasurer for  
11 expenses incurred by the State's Attorney.

12 (3) The State Appellate Defender shall request a  
13 direct appropriation from the Trust Fund for expenses  
14 incurred by the State Appellate Defender in providing  
15 assistance to trial attorneys under item (c)(5) of  
16 Section 10 of the State Appellate Defender Act and an  
17 appropriation to the State Treasurer for payments from  
18 the Trust Fund for the defense of cases in counties other  
19 than Cook County.

20 (4) The State's Attorneys Appellate Prosecutor  
21 shall request a direct appropriation from the Trust Fund  
22 to pay expenses incurred by the State's Attorneys  
23 Appellate Prosecutor and an appropriation to the State  
24 Treasurer for payments from the Trust Fund for expenses  
25 incurred by State's Attorneys in counties other than Cook  
26 County.

27 (5) The Attorney General shall request a direct  
28 appropriation from the Trust Fund to pay expenses  
29 incurred by the Attorney General in assisting the State's  
30 Attorneys in counties other than Cook County.

31 The Public Defender and State's Attorney in Cook County,  
32 the State Appellate Defender, the State's Attorneys Appellate  
33 Prosecutor, and the Attorney General may each request  
34 supplemental appropriations from the Trust Fund during the

1 fiscal year.

2 (e) Moneys in the Trust Fund shall be expended only as  
3 follows:

4 (1) To pay the State Treasurer's costs to  
5 administer the Trust Fund. The amount for this purpose  
6 may not exceed 5% in any one fiscal year of the amount  
7 otherwise appropriated from the Trust Fund in the same  
8 fiscal year.

9 (2) To pay the capital litigation expenses of trial  
10 defense including, but not limited to, DNA testing,  
11 including DNA testing under Section 116-3 of the Code of  
12 Criminal Procedure of 1963, analysis, and expert  
13 testimony, investigatory and other assistance, expert,  
14 forensic, and other witnesses, and mitigation  
15 specialists, and grants and aid provided to public  
16 defenders or assistance to attorneys who have been  
17 appointed by the court to represent defendants who are  
18 charged with capital crimes.

19 (3) To pay the compensation of trial attorneys,  
20 other than public defenders, who have been appointed by  
21 the court to represent defendants who are charged with  
22 capital crimes.

23 (4) To provide State's Attorneys with funding for  
24 capital litigation expenses including, but not limited  
25 to, investigatory and other assistance and expert,  
26 forensic, and other witnesses necessary to prosecute  
27 capital cases. State's Attorneys in any county other  
28 than Cook County seeking funding for capital litigation  
29 expenses including, but not limited to, investigatory and  
30 other assistance and expert, forensic, or other witnesses  
31 under this Section may request that the State's Attorneys  
32 Appellate Prosecutor or the Attorney General, as the case  
33 may be, certify the expenses as reasonable, necessary,  
34 and appropriate for payment from the Trust Fund, on a

1 form created by the State Treasurer. Upon certification  
2 of the expenses and delivery of the certification to the  
3 State Treasurer, the Treasurer shall pay the expenses  
4 directly from the Capital Litigation Trust Fund if there  
5 are sufficient moneys in the Trust Fund to pay the  
6 expenses.

7 (5) To provide financial support through the  
8 Attorney General pursuant to the Attorney General Act for  
9 the several county State's Attorneys outside of Cook  
10 County, but shall not be used to increase personnel for  
11 the Attorney General's Office.

12 (6) To provide financial support through the  
13 State's Attorneys Appellate Prosecutor pursuant to the  
14 State's Attorneys Appellate Prosecutor's Act for the  
15 several county State's Attorneys outside of Cook County,  
16 but shall not be used to increase personnel for the  
17 State's Attorneys Appellate Prosecutor.

18 (7) To provide financial support to the State  
19 Appellate Defender pursuant to the State Appellate  
20 Defender Act.

21 Moneys expended from the Trust Fund shall be in addition  
22 to county funding for Public Defenders and State's Attorneys,  
23 and shall not be used to supplant or reduce ordinary and  
24 customary county funding.

25 (f) Moneys in the Trust Fund shall be appropriated to  
26 the State Appellate Defender, the State's Attorneys Appellate  
27 Prosecutor, the Attorney General, and the State Treasurer.  
28 The State Appellate Defender shall receive an appropriation  
29 from the Trust Fund to enable it to provide assistance to  
30 appointed defense counsel throughout the State and to Public  
31 Defenders in counties other than Cook. The State's Attorneys  
32 Appellate Prosecutor and the Attorney General shall receive  
33 appropriations from the Trust Fund to enable them to provide  
34 assistance to State's Attorneys in counties other than Cook

1 County. Moneys shall be appropriated to the State Treasurer  
2 to enable the Treasurer (i) to make grants to Cook County,  
3 (ii) to pay the expenses of Public Defenders and State's  
4 Attorneys in counties other than Cook County, (iii) to pay  
5 the expenses and compensation of appointed defense counsel in  
6 counties other than Cook County, and (iv) to pay the costs of  
7 administering the Trust Fund. All expenditures and grants  
8 made from the Trust Fund shall be subject to audit by the  
9 Auditor General.

10 (g) For Cook County, grants from the Trust Fund shall be  
11 made and administered as follows:

12 (1) For each State fiscal year, the State's  
13 Attorney and Public Defender must each make a separate  
14 application to the State Treasurer for capital litigation  
15 grants.

16 (2) The State Treasurer shall establish rules and  
17 procedures for grant applications. The rules shall  
18 require the Cook County Treasurer as the grant recipient  
19 to report on a periodic basis to the State Treasurer how  
20 much of the grant has been expended, how much of the  
21 grant is remaining, and the purposes for which the grant  
22 has been used. The rules may also require the Cook  
23 County Treasurer to certify on a periodic basis that  
24 expenditures of the funds have been made for expenses  
25 that are reasonable, necessary, and appropriate for  
26 payment from the Trust Fund.

27 (3) The State Treasurer shall make the grants to  
28 the Cook County Treasurer as soon as possible after the  
29 beginning of the State fiscal year.

30 (4) The State's Attorney or Public Defender may  
31 apply for supplemental grants during the fiscal year.

32 (5) Grant moneys shall be paid to the Cook County  
33 Treasurer in block grants and held in separate accounts  
34 for the State's Attorney, the Public Defender, and court

1 appointed defense counsel other than the Cook County  
2 Public Defender, respectively, for the designated fiscal  
3 year, and are not subject to county appropriation.

4 (6) Expenditure of grant moneys under this  
5 subsection (g) is subject to audit by the Auditor  
6 General.

7 (7) The Cook County Treasurer shall immediately  
8 make payment from the appropriate separate account in the  
9 county treasury for capital litigation expenses to the  
10 State's Attorney, Public Defender, or court appointed  
11 defense counsel other than the Public Defender, as the  
12 case may be, upon order of the State's Attorney, Public  
13 Defender or the court, respectively.

14 (h) If a defendant in a capital case in Cook County is  
15 represented by court appointed counsel other than the Cook  
16 County Public Defender, the appointed counsel shall petition  
17 the court for an order directing the Cook County Treasurer to  
18 pay the court appointed counsel's reasonable and necessary  
19 compensation and capital litigation expenses from grant  
20 moneys provided from the Trust Fund. These petitions shall be  
21 considered in camera. Orders denying petitions for  
22 compensation or expenses are final. Counsel may not petition  
23 for expenses that may have been provided or compensated by  
24 the State Appellate Defender under item (c)(5) of Section 10  
25 of the State Appellate Defender Act.

26 (i) In counties other than Cook County, and excluding  
27 capital litigation expenses or services that may have been  
28 provided by the State Appellate Defender under item (c)(5) of  
29 Section 10 of the State Appellate Defender Act:

30 (1) Upon certification by the circuit court, on a  
31 form created by the State Treasurer, that all or a  
32 portion of the expenses are reasonable, necessary, and  
33 appropriate for payment from the Trust Fund and the  
34 court's delivery of the certification to the Treasurer,

1 the Treasurer shall pay the certified expenses of Public  
2 Defenders from the money appropriated to the Treasurer  
3 for capital litigation expenses of Public Defenders in  
4 any county other than Cook County, if there are  
5 sufficient moneys in the Trust Fund to pay the expenses.

6 (2) If a defendant in a capital case is represented  
7 by court appointed counsel other than the Public  
8 Defender, the appointed counsel shall petition the court  
9 to certify compensation and capital litigation expenses  
10 including, but not limited to, investigatory and other  
11 assistance, expert, forensic, and other witnesses, and  
12 mitigation specialists as reasonable, necessary, and  
13 appropriate for payment from the Trust Fund. Upon  
14 certification on a form created by the State Treasurer of  
15 all or a portion of the compensation and expenses  
16 certified as reasonable, necessary, and appropriate for  
17 payment from the Trust Fund and the court's delivery of  
18 the certification to the Treasurer, the State Treasurer  
19 shall pay the certified compensation and expenses from  
20 the money appropriated to the Treasurer for that purpose,  
21 if there are sufficient moneys in the Trust Fund to make  
22 those payments.

23 (3) A petition for capital litigation expenses  
24 under this subsection shall be considered in camera.  
25 Orders denying petitions for compensation or expenses are  
26 final.

27 (j) If the Trust Fund is discontinued or dissolved by an  
28 Act of the General Assembly or by operation of law, any  
29 balance remaining in the Trust Fund shall be returned to the  
30 General Revenue Fund after deduction of administrative costs,  
31 any other provision of this Act to the contrary  
32 notwithstanding.

33 (Source: P.A. 91-589, eff. 1-1-00.)

1 (725 ILCS 124/19)  
2 (Section scheduled to be repealed on July 1, 2004)  
3 Sec. 19. Report; repeal.

4 (a) The Cook County Public Defender, the Cook County  
5 State's Attorney, the State Appellate Defender, the State's  
6 Attorneys Appellate Prosecutor, and the Attorney General  
7 shall each report separately to the General Assembly by  
8 January 1, 2004 detailing the amounts of money received by  
9 them through this Act, the uses for which those funds were  
10 expended, the balances then in the Capital Litigation Trust  
11 Fund or county accounts, as the case may be, dedicated to  
12 them for the use and support of Public Defenders, appointed  
13 trial defense counsel, and State's Attorneys, as the case may  
14 be. The report shall describe and discuss the need for  
15 continued funding through the Fund and contain any  
16 suggestions for changes to this Act.

17 (b) (Blank). ~~Unless--the--General---Assembly---provides~~  
18 ~~otherwise,--this-Act-is-repealed-on-July-1,--2004.~~  
19 (Source: P.A. 91-589, eff. 1-1-00.)

20 Section 25. The Unified Code of Corrections is amended  
21 by changing Section 5-4-3 as follows:

22 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)  
23 Sec. 5-4-3. Persons convicted of, or found delinquent  
24 for, certain offenses or institutionalized as sexually  
25 dangerous; specimens; genetic marker groups.

26 (a) Any person convicted of, found guilty under the  
27 Juvenile Court Act of 1987 for, or who received a disposition  
28 of court supervision for, a qualifying offense or attempt of  
29 a qualifying offense, convicted or found guilty of any  
30 offense classified as a felony under Illinois law, found  
31 guilty or given supervision for any offense classified as a  
32 felony under the Juvenile Court Act of 1987, or

1 institutionalized as a sexually dangerous person under the  
 2 Sexually Dangerous Persons Act, or committed as a sexually  
 3 violent person under the Sexually Violent Persons Commitment  
 4 Act shall, regardless of the sentence or disposition imposed,  
 5 be required to submit specimens of blood, saliva, or tissue  
 6 to the Illinois Department of State Police in accordance with  
 7 the provisions of this Section, provided such person is:

8 (1) convicted of a qualifying offense or attempt of  
 9 a qualifying offense on or after July 1, 1990 the  
 10 ~~effective--date--of--this--amendatory--Act--of--1989,~~ and  
 11 sentenced to a term of imprisonment, periodic  
 12 imprisonment, fine, probation, conditional discharge or  
 13 any other form of sentence, or given a disposition of  
 14 court supervision for the offense;~~;~~

15 (1.5) found guilty or given supervision under the  
 16 Juvenile Court Act of 1987 for a qualifying offense or  
 17 attempt of a qualifying offense on or after January 1,  
 18 1997; ~~the-effective-date-of-this-amendatory-Act-of-1996,~~  
 19 ~~or~~

20 (2) ordered institutionalized as a sexually  
 21 dangerous person on or after July 1, 1990; ~~the--effective~~  
 22 ~~date-of-this-amendatory-Act-of-1989,~~ ~~or~~

23 (3) convicted of a qualifying offense or attempt of  
 24 a qualifying offense before July 1, 1990 ~~the-effective~~  
 25 ~~date-of-this-amendatory-Act--of--1989~~ and is presently  
 26 confined as a result of such conviction in any State  
 27 correctional facility or county jail or is presently  
 28 serving a sentence of probation, conditional discharge or  
 29 periodic imprisonment as a result of such conviction;~~;~~

30 (3.5) convicted or found guilty of any offense  
 31 classified as a felony under Illinois law or found guilty  
 32 or given supervision for such an offense under the  
 33 Juvenile Court Act of 1987 on or after August 22, 2002;  
 34 ~~the-effective-date--of--this--amendatory-Act--of--the--92nd~~

1 ~~General-Assembly,~~ or

2 (4) presently institutionalized as a sexually  
3 dangerous person or presently institutionalized as a  
4 person found guilty but mentally ill of a sexual offense  
5 or attempt to commit a sexual offense; or

6 (4.5) ordered committed as a sexually violent  
7 person on or after the effective date of the Sexually  
8 Violent Persons Commitment Act; or

9 (5) seeking transfer to or residency in Illinois  
10 under Sections 3-3-11.05 through 3-3-11.5 of the Unified  
11 Code of Corrections and the Interstate Compact for Adult  
12 Offender Supervision or the Interstate Agreements on  
13 Sexually Dangerous Persons Act.

14 Notwithstanding other provisions of this Section, any  
15 person incarcerated in a facility of the Illinois Department  
16 of Corrections on or after August 22, 2002 ~~the-effective-date~~  
17 ~~of-this-amendatory-Act-of-the-92nd-General-Assembly~~ shall be  
18 required to submit a specimen of blood, saliva, or tissue  
19 prior to his or her release on parole or mandatory supervised  
20 release, as a condition of his or her parole or mandatory  
21 supervised release.

22 (a-5) Any person who was otherwise convicted of or  
23 received a disposition of court supervision for any other  
24 offense under the Criminal Code of 1961 or who was found  
25 guilty or given supervision for such a violation under the  
26 Juvenile Court Act of 1987, may, regardless of the sentence  
27 imposed, be required by an order of the court to submit  
28 specimens of blood, saliva, or tissue to the Illinois  
29 Department of State Police in accordance with the provisions  
30 of this Section.

31 (b) Any person required by paragraphs (a)(1), (a)(1.5),  
32 (a)(2), (a)(3.5), and (a-5) to provide specimens of blood,  
33 saliva, or tissue shall provide specimens of blood, saliva,  
34 or tissue within 45 days after sentencing or disposition at a

1 collection site designated by the Illinois Department of  
2 State Police.

3 (c) Any person required by paragraphs (a)(3), (a)(4),  
4 and (a)(4.5) to provide specimens of blood, saliva, or tissue  
5 shall be required to provide such samples prior to final  
6 discharge, parole, or release at a collection site designated  
7 by the Illinois Department of State Police.

8 (c-5) Any person required by paragraph (a)(5) to provide  
9 specimens of blood, saliva, or tissue shall, where feasible,  
10 be required to provide the specimens before being accepted  
11 for conditioned residency in Illinois under the interstate  
12 compact or agreement, but no later than 45 days after arrival  
13 in this State.

14 (c-6) The Illinois Department of State Police may  
15 determine which type of specimen or specimens, blood, saliva,  
16 or tissue, is acceptable for submission to the Division of  
17 Forensic Services for analysis.

18 (d) The Illinois Department of State Police shall  
19 provide all equipment and instructions necessary for the  
20 collection of blood samples. The collection of samples shall  
21 be performed in a medically approved manner. Only a  
22 physician authorized to practice medicine, a registered nurse  
23 or other qualified person trained in venipuncture may  
24 withdraw blood for the purposes of this Act. The samples  
25 shall thereafter be forwarded to the Illinois Department of  
26 State Police, Division of Forensic Services, for analysis and  
27 categorizing into genetic marker groupings.

28 (d-1) The Illinois Department of State Police shall  
29 provide all equipment and instructions necessary for the  
30 collection of saliva samples. The collection of saliva  
31 samples shall be performed in a medically approved manner.  
32 Only a person trained in the instructions promulgated by the  
33 Illinois State Police on collecting saliva may collect saliva  
34 for the purposes of this Section. The samples shall

1 thereafter be forwarded to the Illinois Department of State  
2 Police, Division of Forensic Services, for analysis and  
3 categorizing into genetic marker groupings.

4 (d-2) The Illinois Department of State Police shall  
5 provide all equipment and instructions necessary for the  
6 collection of tissue samples. The collection of tissue  
7 samples shall be performed in a medically approved manner.  
8 Only a person trained in the instructions promulgated by the  
9 Illinois State Police on collecting tissue may collect tissue  
10 for the purposes of this Section. The samples shall  
11 thereafter be forwarded to the Illinois Department of State  
12 Police, Division of Forensic Services, for analysis and  
13 categorizing into genetic marker groupings.

14 (d-5) To the extent that funds are available, the  
15 Illinois Department of State Police shall contract with  
16 qualified personnel and certified laboratories for the  
17 collection, analysis, and categorization of known samples.

18 (e) The genetic marker groupings shall be maintained by  
19 the Illinois Department of State Police, Division of Forensic  
20 Services.

21 (f) The genetic marker grouping analysis information  
22 obtained pursuant to this Act shall be confidential and shall  
23 be released only to peace officers of the United States, of  
24 other states or territories, of the insular possessions of  
25 the United States, of foreign countries duly authorized to  
26 receive the same, to all peace officers of the State of  
27 Illinois and to all prosecutorial agencies, and to defense  
28 counsel as provided by Section 116-5 of the Code of Criminal  
29 Procedure of 1963. The genetic marker grouping analysis  
30 information obtained pursuant to this Act shall be used only  
31 for (i) valid law enforcement identification purposes and as  
32 required by the Federal Bureau of Investigation for  
33 participation in the National DNA database or (ii) technology  
34 validation purposes or (iii) assisting in the defense of the

1 criminally accused pursuant to Section 116-5 of the Code of  
 2 Criminal Procedure of 1963. Notwithstanding any other  
 3 statutory provision to the contrary, all information obtained  
 4 under this Section shall be maintained in a single State data  
 5 base, which may be uploaded into a national database, and  
 6 which information may be subject to expungement only as set  
 7 forth in subsection (f-1).

8 (f-1) Upon receipt of notification of a reversal of a  
 9 conviction based on actual innocence, or of the granting of a  
 10 pardon pursuant to Section 12 of Article V of the Illinois  
 11 Constitution, if that pardon document specifically states  
 12 that the reason for the pardon is the actual innocence of an  
 13 individual whose DNA record has been stored in the State or  
 14 national DNA identification index in accordance with this  
 15 Section by the Illinois Department of State Police, the DNA  
 16 record shall be expunged from the DNA identification index,  
 17 and the Department shall by rule prescribe procedures to  
 18 ensure that the record and any samples, analyses, or other  
 19 documents relating to such record, whether in the possession  
 20 of the Department or any law enforcement or police agency, or  
 21 any forensic DNA laboratory, including any duplicates or  
 22 copies thereof, are destroyed and a letter is sent to the  
 23 court verifying the expungement is completed.

24 (f-5) Any person who intentionally uses genetic marker  
 25 grouping analysis information, or any other information  
 26 derived from a DNA sample, beyond the authorized uses as  
 27 provided under this Section, or any other Illinois law, is  
 28 guilty of a Class 4 felony, and shall be subject to a fine of  
 29 not less than \$5,000.

30 (g) For the purposes of this Section, "qualifying  
 31 offense" means any of the following:

- 32 (1) any violation or inchoate violation of Section
- 33 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the
- 34 Criminal Code of 1961~~i7-er~~

1           (1.1) any violation or inchoate violation of  
2           Section 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2,  
3           18-3, 18-4, 19-1, or 19-2 of the Criminal Code of 1961  
4           for which persons are convicted on or after July 1,  
5           2001;~~7-0~~

6           (2) any former statute of this State which defined  
7           a felony sexual offense;~~7-0~~

8           (3) (blank);~~7-0~~

9           (4) any inchoate violation of Section 9-3.1,  
10          11-9.3, 12-7.3, or 12-7.4 of the Criminal Code of 1961;~~7~~  
11          or

12          (5) any violation or inchoate violation of Article  
13          29D of the Criminal Code of 1961.

14          (g-5) (Blank).

15          (h) The Illinois Department of State Police shall be the  
16          State central repository for all genetic marker grouping  
17          analysis information obtained pursuant to this Act. The  
18          Illinois Department of State Police may promulgate rules for  
19          the form and manner of the collection of blood, saliva, or  
20          tissue samples and other procedures for the operation of this  
21          Act. The provisions of the Administrative Review Law shall  
22          apply to all actions taken under the rules so promulgated.

23          (i) A person required to provide a blood, saliva, or  
24          tissue specimen shall cooperate with the collection of the  
25          specimen and any deliberate act by that person intended to  
26          impede, delay or stop the collection of the blood, saliva, or  
27          tissue specimen is a Class A misdemeanor.

28          (j) Any person required by subsection (a) to submit  
29          specimens of blood, saliva, or tissue to the Illinois  
30          Department of State Police for analysis and categorization  
31          into genetic marker grouping, in addition to any other  
32          disposition, penalty, or fine imposed, shall pay an analysis  
33          fee of \$200. If the analysis fee is not paid at the time of  
34          sentencing, the court shall establish a fee schedule by which

1 the entire amount of the analysis fee shall be paid in full,  
2 such schedule not to exceed 24 months from the time of  
3 conviction. The inability to pay this analysis fee shall not  
4 be the sole ground to incarcerate the person.

5 (k) All analysis and categorization fees provided for by  
6 subsection (j) shall be regulated as follows:

7 (1) The State Offender DNA Identification System  
8 Fund is hereby created as a special fund in the State  
9 Treasury.

10 (2) All fees shall be collected by the clerk of the  
11 court and forwarded to the State Offender DNA  
12 Identification System Fund for deposit. The clerk of the  
13 circuit court may retain the amount of \$10 from each  
14 collected analysis fee to offset administrative costs  
15 incurred in carrying out the clerk's responsibilities  
16 under this Section.

17 (3) Fees deposited into the State Offender DNA  
18 Identification System Fund shall be used by Illinois  
19 State Police crime laboratories as designated by the  
20 Director of State Police. These funds shall be in  
21 addition to any allocations made pursuant to existing  
22 laws and shall be designated for the exclusive use of  
23 State crime laboratories. These uses may include, but  
24 are not limited to, the following:

25 (A) Costs incurred in providing analysis and  
26 genetic marker categorization as required by  
27 subsection (d).

28 (B) Costs incurred in maintaining genetic  
29 marker groupings as required by subsection (e).

30 (C) Costs incurred in the purchase and  
31 maintenance of equipment for use in performing  
32 analyses.

33 (D) Costs incurred in continuing research and  
34 development of new techniques for analysis and

1 genetic marker categorization.

2 (E) Costs incurred in continuing education,  
3 training, and professional development of forensic  
4 scientists regularly employed by these laboratories.

5 (1) The failure of a person to provide a specimen, or of  
6 any person or agency to collect a specimen, within the 45 day  
7 period shall in no way alter the obligation of the person to  
8 submit such specimen, or the authority of the Illinois  
9 Department of State Police or persons designated by the  
10 Department to collect the specimen, or the authority of the  
11 Illinois Department of State Police to accept, analyze and  
12 maintain the specimen or to maintain or upload results of  
13 genetic marker grouping analysis information into a State or  
14 national database.

15 (Source: P.A. 91-528, eff. 1-1-00; 92-16, eff. 6-28-01;  
16 92-40, eff. 6-29-01; 92-571, eff. 6-26-02; 92-600, eff.  
17 6-28-02; 92-829, eff. 8-22-02; 92-854, eff. 12-5-02; revised  
18 1-20-03.)

19 Section 90. The State Finance Act is amended by adding  
20 Section 5.595 as follows:

21 (30 ILCS 105/5.595 new)

22 Sec. 5.595. The Illinois Law Enforcement Training  
23 Standards Board Costs and Attorney Fees Fund.

24 Section 95. Severability. The provisions of this Act  
25 are severable under Section 1.31 of the Statute on Statutes.

26 Section 99. Effective date. This Act takes effect upon  
27 becoming law."